IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CMPMO No. 149 of 2005.

Date of Decision: 2nd August, 2006.

Surinder Kumar. **Petitioner.**

Versus

Kamlesh Devi & another. **Respondents.**

Coram

The Hon'ble Mr. Justice V.K.Gupta, C.J.

Whether approved for reporting[2]?

For the petitioner: **Mr. O.P. Sharma, Senior Advocate, with Mr. K.R. Kashyap, Advocate.**

For the respondents: **None.**

V.K.Gupta, C.J. (Oral).

Heard Mr. Sharma, learned Senior Counsel appearing for the petitioner.

I have perused the impugned order dated 10th June, 2005 passed by the learned Civil Judge (Junior Division) II, Amb, District Una. By this order, the learned Court below even while allowing the petitioner-plaintiff's application for amendment of the plaint has rejected the prayer for appointment of an hand writing Expert for comparison of the

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Whether the reporters of Local Papers are allowed to see the Judgment?

signature on an alleged agreement to sell allegedly executed on 27th June, 1988. The petitioner's prayer was that the alleged signature occurring on this document should be compared with his standard signature to find out whether the signature on the aforesaid document was genuine or forged.

To say the least, the aforesaid prayer of the petitioner-plaintiff was quite peculiar. The petitioner-plaintiff filed a suit for vacant possession of the property in question on the ground that defendant No.1 had forcibly occupied the said property. It is in the written statement filed by defendant No.1 that she relied upon the aforesaid document dated 27th June, 1988 by claiming that the petitioner-plaintiff had executed this document in her favour whereby he had agreed to sell the suit property to her for valuable consideration. Since respondent No.1-defendant was relying upon the aforesaid document which was the sheetanchor of her defence and since admittedly the petitioner-plaintiff was disputing the existence and/or execution of this document and was also specifically disputing his signature thereupon, the onus to prove this document and to establish that the signature appearing thereupon were genuine signature

of the petitioner-plaintiff lay squarely upon defendant No.1. If at all, it was defendant No.1 who ought to have been bothered to have the said signature proved by comparison from the petitioner's standard signature through an hand writing Expert.

Based on the aforesaid discussion, I totally fail to understand and appreciate as to how could the petitioner-plaintiff be termed as an aggrieved person because initial onus which lay upon the defendant was required to be discharged by the defendant alone.

The learned trial Court was justified in rejecting the petitioner's aforesaid prayer. No interference is called for. The petition is dismissed.

2nd August, 2006. (V.K. Gupta), C.J.
(tr)